

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>CARL GREEN, Signature Capital,</b>	<b>)</b>	<b>CASE NO. 4:11CV3095</b>
	<b>)</b>	
<b>Appellant,</b>	<b>)</b>	<b>Bankruptcy Nos. 08-82149, 08-08081</b>
	<b>)</b>	<b>Chapter 13</b>
<b>v.</b>	<b>)</b>	
	<b>)</b>	
<b>DARRIN PICK, LISA PICK, DEAN</b>	<b>)</b>	<b>MEMORANDUM AND ORDER</b>
<b>PICK, KENNETH PAUL PICK,</b>	<b>)</b>	
<b>CHARLOTTE MARIE PICK,</b>	<b>)</b>	
	<b>)</b>	
<b>Appellees.</b>	<b>)</b>	

DARRIN PICK, LISA PICK, DEAN	)	CASE NO. 4:11CV3095
PICK, KENNETH PAUL PICK,	)	
CHARLOTTE MARIE PICK,	)	Bankruptcy Nos. 08-82149, 08-08081
	)	Chapter 13
Cross-Appellants,	)	
	)	
v.	)	MEMORANDUM AND ORDER
	)	
CARL GREEN, Signature Capital,	)	
	)	
Cross-Appellee.	)	

A notice of appeal was filed by Carl Green, Appellant, from the Judgment in this Chapter 13 bankruptcy case entered by Chief U.S. Bankruptcy Judge Thomas L. Saladino on May 25, 2011. (Filing No. 1.) Appellants filed a cross-appeal. (Filing No. 2.)

The case is now before the Court on the following motions: Cross-Appellants' motion for leave to file a statement of issues to be presented (Filing No. 8); Cross-Appellants' motion to dismiss appeal (Filing No. 9); and Appellant's objection to the Cross-Appellants' motion to dismiss (Filing No. 11).

## FACTUAL BACKGROUND

The Appellant failed to file a separate election to have the appeal heard by the district court. Bankr. R. 8001(e)(1). The record includes a request for a transcript by

Appellant, but not a transcript. The Appellees represent in their motion to dismiss that the case administrator for the U.S. Bankruptcy Court for the District of Nebraska stated the Appellant's transcript request was insufficient because Appellant "failed to provide a valid credit card or payment of the transcript" and, therefore, the transcript has not been released by the Bankruptcy Court for lack of payment. (Filing No. 9.) Finally, Appellant's brief was not filed within 14 days after the entry of the appeal on this Court's docket. While Appellant timely moved for an extension of time to file a brief, he failed to state good cause, or any cause, for the request.

Cross-appellants filed a motion for leave to file a statement of issues to be presented. The motion states that the Cross-Appellants believed the appeal would be before the Bankruptcy Appellate Panel. Moreover, they acknowledge their failure to file a statement of issues to be presented as required under Bankruptcy Rule 8006. However, they argue that their notice of appeal included a statement of issues to be presented and their failure was excusable neglect and did not prejudice the Appellant. Cross-appellants have not filed a brief and have not requested an extension of time to do so.

### **DISCUSSION**

Federal Bankruptcy Rule 8001(a) provides that "[a]n appellant's failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal."

The bankruptcy court's order appears to be appealable under 28 U.S.C. § 158(a). Because the record is incomplete absent a transcript, the Court cannot consider either the appeal or the cross-appeal. Neither party has filed a brief, and the Appellant failed to state

good cause as to why he should receive an extension of time to do so. Moreover, Appellants failed to designate this Court as the appellate court and the cross-appellants assumed they would proceed before the Bankruptcy Appellate Panel. Therefore, the Court concludes that the appeal and cross-appeal should be dismissed under Bankruptcy Rule 8001(a).

Accordingly,

IT IS ORDERED:

1. The Appellees/Cross-Appellants' motion to dismiss appeal (Filing No. 9) is granted;
2. The appeal and cross-appeal are dismissed;
3. The Appellees/Cross-Appellants' motion for leave to file a statement of issues to be presented (Filing No. 8) is denied as moot;
4. The Appellant's objection to the Appellees/Cross-Appellants' motion to dismiss appeal (Filing No. 11) is denied;
5. Pursuant to Federal Rule of Bankruptcy Procedure 8016(b), the clerk is directed to transmit a copy of this Memorandum and Order to the United States Bankruptcy Court for the District of Nebraska; and
6. A separate Judgment will be filed.

DATED this 29<sup>th</sup> day of August, 2011.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge